IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

NOTICE OF MOTION NO.1268 OF 2007
IN
SUIT NO.941 OF 2007

Noorjahan S. Dawood through
her C.A. Rafik Abubaker Memon. ...Plaintiff.
Vs.
Sajid Yakub Kantharia & Ors. ...Defendants.

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Ms. Mamta Saad with Ms.Banatwala and Mr. Renawat Jeetendra i/b. M/s. Banatwala & Co.for the Plaintiff.
Mr. A.A. Patel i/b. M. A. Patel for Defendant Nos.1 to 3.

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CORAM :DR.D.Y.CHANDRACHUD, J.
December 6, 2007.

P.C.:

The Notice of Motion has been taken out in a suit for the administration of the estate of the deceased father, Yakub Haji Adam Kantharia. The Plaintiff, the First Defendant and the Third to Fifth Defendants are siblings, while the Second Defendant is their mother. The father, Yakub, expired on 13th June 2002. The Plaintiff' s grandfather had three sons, including Yakub. The First Defendant had instituted a suit (Suit 3405 of 2003) against his two uncles and

the Plaintiff, her mother and three sisters were impleaded as the Defendants to the suit. Consent Terms were filed in the suit on 17th September 2004 (Exhibit F to the Plaint). The properties which have devolved on the branch of Yakub, which is represented by the Plaintiff and the Defendants, are more particularly described in Exhibit G to the Plaint.

The contention of the Plaintiff is that the First Defendant has dealt with the properties of the deceased father to the detriment of the other co-sharers. Consequently, in the suit, a declaration is sought to the effect that the Plaintiff and Defendant Nos.1 to 5 have equal shares in the suit properties. An affidavit has been filed on 22nd August 2007 in pursuance of the liberty granted by the Learned Single Judge on 9th August 2007 for the purposes of placing all the developments on record. In the affidavit, it has been stated that one of the properties, more particularly described in Exhibit G to the Plaint, is a property situated at Survey No.6 of village Pelhar, Taluka Vasai. On 22nd February 2002, the deceased father had entered into a

conducting agreement by which the stable which is situated on the property having approximately 130 heads of cattle was given out for conducting on a monthly royalty of Rs.34,000/-. The conducting agreement commenced from 23rd February 2002 and was to expire on 22nd February 2007. The allegation of the Plaintiff is that the First and Second Defendants disposed of the cattle hurriedly upon the expiry of the agreement. The Fourth Defendant has filed a reply to the Notice of Motion. In the reply, it has been stated that while the dairy business was carried out during the life time of the father, however, after his death "everything was disposed of and the said stable was given on leave and licence basis". No details whatsoever have been furnished of the transaction.

According to the First Defendant, the land at Survey No.6 was sold by the Plaintiff and her husband at and for a consideration of Rs.45 lakhs, out of which a part payment of an amount of Rs.18 lakhs was received. Similarly, it has been stated that the Plaintiff and her husband sold land bearing Survey No.428, Hissa Nos.1 and 2,

admeasuring 2.5 acres, situated at Manubar village for a consideration of Rs.24 lakhs.

In the rejoinder, the Plaintiff has denied having carried out these transactions. The First Defendant has alleged that after the death of his father, he resided with the Plaintiff in London and it was on the representation of the Plaintiff that he executed a Power of Attorney in favour of a relation of the Plaintiff's husband who could attend to the properties in India. The First Defendant relies upon an affidavit of a purchaser who states that on 2nd February 2005, it was the Plaintiff who had approached him for the sale of Survey No.6 for a consideration of Rs.45 lakhs, of which an amount of Rs.18 lakhs was paid. In the rejoinder, this allegation has been denied by the Plaintiff as according to the Plaintiff, neither she, nor her husband were in India on the relevant date which would be evident on a perusal of the entries in their pass-ports. The Plaintiff resides in London.

There are serious allegations between the parties in regard

to the manner in which each of them is stated to have dealt with the estate of the father. The Plaintiff has relied upon an Index 2 extract of the property comprised in Survey No.428/1 and 428/2 of village Dahegam which shows that the First Defendant and his mother had sold the property on 6th September 2003. Similarly, according to the Plaintiff, the property at village Manubar was mutated in the name of the First Defendant and his mother on the death of the father and the extract from the record of rights would show that the First Defendant and his mother represented themselves to be the sole heirs of the deceased father.

During the pendency of the Motion, an effort was made to resolve the family dispute, but that has ended in failure. On 31st August 2007, the Learned Single Judge directed the Defendants to disclose the assets of their father, Yakub, and in the meantime, an order was passed in terms of prayer clause (a-i). The First Defendant has filed an affidavit on 22nd November 2007 stating that the properties which have been described in the Plaint and in the affidavit

in reply are the only properties of the deceased father.

In my view, the record before the Court manifestly demonstrates the serious nature of the allegations levelled by the parties. The parties allege that each is involved in clandestinely disposing of the estate of the deceased father. A fit and proper case is made out for the appointment of the Receiver so as to safeguard the estate and in order to ensure that the estate is not frittered away during the pendency of the proceedings. The monies, if any, realised by any of the parties on a clandestine disposal of any of the properties would have to be duly accounted for. The Court Receiver is accordingly appointed as Receiver of the properties more particularly described in Exhibit G to the Plaint. The Receiver is directed not to dispossess any party found in possession of the property. The Receiver shall, in respect of those properties which are tenanted, collect the rents from the respective licensees/tenants and submit a report before the Court for further directions. Until the Receiver takes charge, there shall be an ad-interim order, directing the parties to

maintain status quo in respect of the estate of the deceased forming the subject matter of the Motion.

The Notice of Motion is disposed of.

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